

NOTTINGHAMSHIRE COUNTY COUNCIL

FAIR ACCESS PROTOCOL

PROPOSED JULY 2021

Contents

Section 1- introduction

Section 2 – overall procedures and context

- 2.1 Legislative background**
- 2.2 The Nottinghamshire context**
- 2.3 Operation of locality-based panels**
- 2.4 Scope of the Fair Access Protocol**
- 2.5 Procedures and responsibilities**

Section 3- requests by schools for referral to fair access panel

- 3.1 Legislative context**
- 3.2 Secondary School refusals on the grounds of behaviour**
- 3.3 Primary School refusals on the grounds of behaviour**

Section 4- locality panel decision making

- 4.1 Consideration of referrals**
- 4.2 Assessing the suitability of a placement**
- 4.3 Recommendations**
- 4.4 Alternative provision**
- 4.5 Managed move**
- 4.6 Applications for children to return to school from Elective Home Education**
- 4.7 Local Authority support and monitoring role**

Section 5- additional funding

- 5.1 Higher level special educational needs (HLN)**
- 5.2 Permanently excluded children**
- 5.3 Home to School Travel Assistance**

Section 6- monitoring and review

- 6.1 Monitoring effectiveness of the Fair Access Protocol**
- 6.2 Review**

Section 1 - introduction

Each local authority must have a Fair Access Protocol to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible. (School Admissions Code 2021)

There is a duty on local authorities, schools and academies to work together in partnership to ensure that the best interests of vulnerable children are considered whilst ensuring that no school, including those with places available, should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol. The School Admission Code 2021 makes clear the shared responsibility in relation to the operation of the Fair Access Protocol, including when it should be used and setting out a clear process of how it should work, including requiring that placement decisions need to be made within 20 school days of a child being referred to the Protocol.

The statutory responsibility for local authorities to coordinate admissions outside the normal round (in-year admissions) was removed for admissions from September 2013. Parents now face a wide range of different practices and procedures in respect of applying for a school place for their child. As schools increasingly take responsibility for their own admissions, the risk that children will 'fall between the cracks' and be unable to secure a place quickly at a local school increases without effective collaborative working. In addition, the process can be complex for parents to understand because the way in-year admissions are managed varies from one local authority to another.

The operation of the Fair Access Protocol is outside the arrangements of coordination and is triggered when a parent of an eligible child has not secured a school place under in-year admissions procedures or an admission authority has made a referral. Most children should be able to secure a school place through the normal in-year admissions process, either as a result of a parental application or following an approach by the Local Authority to any school. The Fair Access Protocol is only intended to be used as a mechanism to secure a school place in-year for the most vulnerable children and should not be used to circumvent usual in year admissions process.

Section 2 – overall procedures and context

2.1 – Legislative background

The School Admissions Code 2021, 3.15 states that **'Once the Protocol has been agreed by the majority of schools in its area, all admission authorities must participate in it. Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full. Local authorities must provide admission authorities with reasonable notice and information as to how and when discussions around the placement of children via the Protocol will take place.'**

The School Admissions Code 2021 applies to admissions to all maintained schools in England and should be read alongside the School Admission Appeals Code and other guidance and law that affect admissions and admission appeals in England. Academy Schools (including free schools, university

technical colleges and studio schools) are required by their funding agreements to comply with the School Admissions Code 2021 and the law relating to admissions, though the Secretary of State has the power to vary this requirement where there is demonstrable need.

2.2 – The Nottinghamshire context

Nottinghamshire County Council has established an in-year coordinated admission scheme for Nottinghamshire community and voluntary controlled schools with an option for own admission authority schools to participate. If a place cannot be offered through the normal in-year admissions process, the application may be considered in line with the County Council's Fair Access Protocol. For those schools not participating in the in-year scheme, the Fair Access Protocol is key in identifying those vulnerable groups to ensure that vulnerable children without school places are not overlooked.

Nottinghamshire County Council has well-established collaborative fair access procedures at secondary and primary level, supported by staff from the Fair Access Team and Primary Social Emotional and Mental Health (SEMH) Team. In Nottinghamshire the Fair Access Protocol operates on a locality level, at secondary through collaborative meetings of nine panels and at primary through direct conversation with school leaders within localities.

Admissions correspondence and agreed admissions processes are designed to enhance continuity between the in-year scheme and the Fair Access Protocol. This is to ensure that when a child has not secured a school place through the normal admissions process, the Fair Access Protocol is triggered.

2.3 – Operation of Locality-based panels

The fair access process at secondary level is facilitated by nine locality-based school panels who are expected to meet every 4 school weeks, in line with Nottinghamshire County Council's agreed school holiday dates, to make recommendations for the placement of children living in their area, including those who have been permanently excluded. Panels consist of representatives from all schools and the Local Authority. All Nottinghamshire localities are required to have an operational fair access panel and all panels are required to work within the same legislative framework.

The nine locality-based school panels have developed different models of operation to meet the needs in their local area. The fair access process requires all the locality panels to make appropriate provision for young people who require education either in a mainstream school or in alternative provision. Local procedures must comply with the requirements of the agreed Nottinghamshire Fair Access Protocol and unplaced pupils who meet the criteria must be offered a place within 20 school days of agreement that the child will be considered under the Fair Access Protocol. In Nottinghamshire this date is taken as the date of referral through the fair access process. Regardless of their operational arrangements all panels should seek to minimise the number of days that a child or young person remains without access to education. Appendix 1 sets out the process followed for secondary placement requests via the Protocol.

Occasionally, the nearest accessible school place for a particular child may fall within a neighbouring locality. In these circumstances, cross-locality collaboration will be necessary to establish the most appropriate placement for the child.

The need for primary places to be allocated through the fair access process is rare, however, it is still a requirement for all admission authorities to participate in the Fair Access Protocol. Where school placements are required for primary age children these will be referred to the Local Authority's Children Out of School Panel (COOS) for action. Colleagues from the Fair Access Team and SEMH team will work in collaboration with local school leaders to identify appropriate placements.

2.4 – Scope of the Fair Access Protocol

The majority of applications for school places will be dealt with through normal admission procedures. However, some children in vulnerable groups may find it difficult to secure a school place.

The School Admissions Code 2021 (3.17) states that Fair Access Protocols may only be used to place the following groups of vulnerable and/or hard to place children where they are having difficulty in securing a school place in-year and it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures:

- a) children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Protocol;
- b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- c) children from the criminal justice system;
- d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;
- e) children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions;
- f) children who are carers;
- g) children who are homeless;
- h) children in formal kinship care arrangements;
- i) children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;
- j) children who have been refused a school place on the grounds of their challenging behaviour and referred to the Protocol in accordance with paragraph 3.10 of this Code;
- k) children for whom a place has not been sought due to exceptional circumstances;
- l) children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted; and
- m) previously looked after children for whom the local authority has been unable to promptly secure a school place.

Looked after children or children with an Education, Health and Care Plan naming the school, fall outside the Fair Access Protocol and other arrangements are in place to ensure that these children are admitted.

2.5 – Procedures and responsibilities

For applications that are processed through Nottinghamshire County Council's co-ordinated in-year scheme, fair access will automatically be triggered in accordance with timelines laid out in the scheme. Own admission authority schools that are not participating in Nottinghamshire County Council's in-year coordinated scheme are required, on receipt of an in-year application, to notify the County Council of the application within 2 days and its subsequent outcome within 2 days. This enables the local authority to track and safeguard children in the area to ensure they are not missing education and make a referral under the Fair Access Protocol as necessary.

Eligibility for the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child. Admission authorities must process these applications in accordance with their usual in-year admission procedures, as set out in the School Admissions Code 2021. They must not refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol.

It is the responsibility of each school to send a representative to the meeting; this representative must be authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full. As set out in the School Admissions Code 2021, decisions about admitting children under the Protocol can be made by one individual in an admission authority provided that suitable authority has been delegated to that individual.

The Local authority will provide to panels meeting dates for the academic year, prior to the start of the academic year, in order that reasonable notice as to how and when discussions around the placement of children via the Protocol will take place. Information, in the form an agenda, to facilitate panel discussions will be provided by the Local Authority to all panel representatives 3 school days in advance of the meeting.

It is the responsibility of schools attending the panel to agree how they will facilitate chairing and minute taking of the panel.

Section 3 - requests by schools for referral to fair access panel

3.1- Legislative context

The School Admissions Code 2021 (3.10) states that **'where an admission authority receives an in-year application for a year group that is not the normal point of entry and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour, it may refuse admission and refer the child to the Fair Access Protocol'**.

'Behaviour can be described as challenging where it would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour or it is of such severity, frequency, or duration that it is beyond the normal range that schools can tolerate. The behaviour would be expected to significantly interfere with the pupil's/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.' An admission authority should only seek to rely on this provision **'if it has a particularly high proportion of either children with challenging behaviour or previously permanently excluded**

pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.'

The use of this provision must not be used to give time to gather further evidence or unnecessarily delay the admission of children to school. This provision will not apply to a looked after child, a previously looked after child or a child with an Education, Health and Care Plan naming the school in question, as these children **must** be admitted. In line with paragraph 3.9 of the School Admissions Code, admission authorities must not refuse to admit a child on behavioural grounds at any point in the normal year of entry (ie. year 7 or reception).

There are limited grounds on which an application for admission can be refused. The School Admissions Code 2021 (3.8) states that where a child has been permanently excluded from two or more schools there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion, other than in excepted cases detailed in this paragraph of the Code.

The School Admissions Code 2021 (2.28) states that admission authorities **must not** refuse to admit a child solely because:

- they have applied later than other applicants
- they are not of the faith of the school in the case of a school designated with a religious character
- they have followed a different curriculum at their previous school
- information has not been received from the previous school

3.2- Secondary School refusals on the grounds of behaviour

Where a Nottinghamshire secondary school does not wish to admit a child because it has good reason to believe that the child may display challenging behaviour, the school will need to inform the Local Authority via the agreed Nottinghamshire reporting mechanism. The application will then be added to the agenda for discussion at their locality panel, or to the Nottinghamshire County Council Children Out Of School (COOS) panel if there is not an appropriate locality panel.

If an application is to be referred on the grounds of behaviour, additional supporting information must be provided by the admission authority describing the lawful basis on which they believe the child should be referred to the Fair Access Protocol. In the absence of information being provided the application must be considered under in-year process in line with the usual admissions procedure.

The following evidence should be provided to support the admission authority's request for refusal:

- a) evidence that the child has a history of significantly challenging behaviour, in line with the definition of challenging behaviour in the Code, and corroborated by expert diagnosis, school exclusion history, the youth justice system or other appropriate sources, and
- b) the school has a particularly high proportion of either children with challenging behaviour or permanently excluded pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.

Appendix 2 provides the proforma that should be completed to refer refusals on the grounds of behaviour to the Fair Access Protocol.

3.3- Primary School refusals on the grounds of behaviour

Where a Nottinghamshire primary school does not wish to admit a child because it has good reason to believe that the child may display challenging behaviour, the school will need to inform the Local Authority via the agreed Nottinghamshire reporting mechanism. The application will then be added to the agenda for discussion at the Nottinghamshire County Council Children Out Of School (COOS) panel.

If an application is to be referred on the grounds of behaviour, additional supporting information must be provided by the admission authority or Governing Body describing the lawful basis on which they believe the child should be referred to the Fair Access Protocol. In the absence of information being provided the application must be considered under in-year process in line with the usual admissions procedure.

The following evidence should be provided to support the request for refusal. For maintained schools this will be provided by the Governing Body and for own admission authority schools by the admission authority:

- a) evidence that the child has a history of significantly challenging behaviour, in line with the definition of challenging behaviour in the Code, and corroborated by expert diagnosis, school exclusion history, the youth justice system or other appropriate sources, and
- b) the school has a particularly high proportion of either children with challenging behaviour or permanently excluded pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.

Appendix 2 provides the proforma that should be completed to refer refusals on the grounds of behaviour to the Fair Access Protocol.

Section 4 – locality panel decision making

4.1- Consideration of referrals

No school - including those with places available – should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol.

For unplaced children in the locality who require a place to be allocated via the Protocol, the Local Authority will make recommendations for place allocations, taking into account parental preference, catchment and needs of the child, whilst ensuring a fair and equitable distribution of children.

The locality panel will be expected to consider the parental application, the Local Authority recommendation and the admission authority's referral, where applicable. At each panel current data will be provided by the Local Authority pertaining to the number of children on roll at each locality school and the number of fair access admissions in relevant schools across the academic year in order to support the decision making process.

4.2-Assessing the suitability of a placement

As part of assessing the suitability of a placement for a child, the panel must take account of any relevant information provided by parents/carers, school, Local Authority, other admission authorities or professional agencies. This could include a previous serious breakdown in the relationship between the school and the family, or strong views about the religious ethos of a school.

Data provided by the Local Authority to panels should be used to ensure an equitable distribution of fair access placements across a locality. Where children are placed via the Protocol due to meeting criterion L only (children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home) these placements will be identified separately from allocations made for children meeting other criterion to inform decision making.

Locality panels are required to give due consideration to the specific needs of any vulnerable pupils that they are seeking to place. They should aim to identify an educational pathway that offers the child the best opportunity to achieve a positive academic outcome. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

Locality panels are also responsible for ensuring that appropriate educational provision will be sought for children who have a right to educational provision and whose applications are being considered under the Fair Access Protocol but who are not ready for mainstream schooling. In the majority of circumstances, this will involve placing the child onto the roll of their catchment school to enable the co-ordination of an appropriate alternative curriculum package.

Wherever possible, children with a religious affiliation should be matched to a suitable school.

4.3- Recommendations

Locality panels are required to identify school placements for all children who have been identified as meeting the requirements of the Fair Access Protocol, including those who have been permanently excluded. All schools are expected to admit children who have been allocated to them through this process. Non-attendance by a school representative at a panel meeting does not preclude a decision to place a child at that school and these decisions are still binding.

Every effort should be made to identify a school place quickly, and as a requirement of the School Admissions Code 2021 within a maximum of 20 school days. If in a particular case there are valid reasons why a school roll cannot be identified at the locality meeting, the protocol requires that locality panels are responsible for establishing the educational provision a child will receive and monitoring its effectiveness.

The allocation of a place in accordance with the Fair Access Protocol does not override a parent's right to appeal against refusal of a place at any school for which they have applied. Children allocated a place at a school in accordance with the Fair Access Protocol must take precedence over those on a waiting list.

4.4- Alternative provision

In rare circumstances alternative provision may be recommended. This means that a school will be identified to take responsibility for the learning and wellbeing of the child but the education will take place somewhere other than the main school site.

4.5- Managed move

If the child currently has a school place, the panel may suggest that the parent consider withdrawing the formal application to allow a 'managed move' transfer. The child will then access learning at a new school for an agreed period of time to ensure that all parties are certain that a permanent transfer will be in the child's best interests. The child retains the right to return to their current school during this process.

The process of managed moves falls outside the scope of fair access legislation and will therefore only apply if individual locality panels have specifically agreed to develop secure procedures to facilitate such transfers in their area and the parent agrees to participate in that process.

4.6- Applications for children to return to school from Elective Home Education

When a request is made for a return to school for children who have been Electively Home Educated and meet criteria to be placed through the Fair Access Protocol, a placement will usually be sought at the child's most recently attended school. Not all children returning to school from Elective Home Education will be eligible to be placed through the Fair Access Protocol.

4.7. Local authority support and monitoring role

If a locality panel meeting is deferred or cancelled, the cases on that month's agenda will be referred to the COOS panel who will make decisions regarding placements.

Whilst this Fair Access Protocol covers all maintained schools and academies within Nottinghamshire, every effort will be made to contact a neighbouring authority to help secure a school place in that area if that is deemed appropriate.

There may be rare occasions where a child is not offered a school place by the locality panel or where the school identified by the panel fails to admit the child. In these exceptional cases, the local authority may direct a school to admit the child or may make a referral to a regulatory body. Interim educational provision will be commissioned by the Local Authority, the cost of which may be charged back to the panel or school in question.

Section 5- Additional funding

5.1 Higher level special educational needs (HLN)

Children already in receipt of funding through Education Health and Care Plans (EHCPs), including out of county EHCPs, and those in receipt of Higher Level Special Educational Needs Funding (HLN), will have that funding transferred to the receiving school for an agreed period of time.

The Fair Access team will offer advice and support to schools who choose to make new HLN bids if they are asked to admit children with significant special educational needs, serious mental health needs, those who raise serious safeguarding concerns that require mitigation, or children who need to be placed on a school roll for safeguarding purposes but who are known to currently require an alternative educational provision arrangement.

Funding to support pupils with social emotional and mental health (SEMH) needs is devolved to localities through their School Behaviour and Attendance Partnerships. Schools participating in such partnerships will be able to access this funding. Schools who have not agreed a partnership funding agreement with the Local Authority will be expected to meet the needs of pupils with SEMH needs from their own resources. In localities where the fair access panel and the school behaviour and attendance partnership operate separately they are strongly advised to have agreed communication procedures.

5.2 Permanently excluded children

A permanently excluded child who is admitted to a new school will have, from the date on roll, the remaining portion of the Age Weighted Pupil Unit (AWPU) formula in that financial year transferred to the new school.

5.3 Home to School Travel Assistance

Key Stage 4 pupils who are applying for a school place as a consequence of a change of residence, but who live within 8 miles of their original school place, may be able access Home to School Travel Assistance support to facilitate the completion of the examination courses that they have already started. In these cases discussions with the young person, the applicant and the current school will be led by the Fair Access team to identify a recommendation to panel for the most appropriate educational pathway for the young person.

If a locality panel, in accordance with the Fair Access Protocol, identifies a place at a school to which Home to School Travel Assistance support would not ordinarily be available, the Fair Access team will confirm that the place has been appropriately designated. Home to School Travel Assistance funding may be made available if the distance criterion is met.

Section 6- Monitoring and review

6.1 Monitoring effectiveness of the Fair Access Protocol

The local authority monitors the placement of children identified through the Fair Access Protocol in a number of ways:

- Children Out Of School meeting- weekly
- Vulnerable Children Education Commissioning- 3 weekly
- Report to relevant internal groups including the Children Missing Education Board.

In addition, the School Admissions Code 2021 (3.30) requires local authorities to produce an annual report on admissions for all schools in their area. This must be sent to the Office of the Schools Adjudicator (OSA) by 31 October and must cover an assessment of the effectiveness of Fair Access Protocols and coordination in their area, including how many children were admitted to schools under the protocol.

Nottinghamshire County Council has a duty to monitor the quality of alternative provision and does so through the NCC approved provider process.

6.2 Review

The Fair Access Protocol is reviewed regularly with relevant partners and agreed by the Children and Young People Committee.

In the event that the majority of schools in an area can no longer support the principles and approach of their local Fair Access Protocol, they should initiate a review with the local authority. This can be initiated by the majority of heads contacting the fair access team manager to request this. The existing Fair Access Protocol will remain binding on all schools in the local area until the point at which a new one is adopted.